



STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC UTILITY CONTROL

WC 10-101
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FILED/ACCEPTED

APR 26 2010

DOCKET NO. 800205

APPLICATION OF
THE NEW YORK TELEPHONE COMPANY
FOR APPROVAL OF A TARIFF FILING
REGARDING

Federal Communications Commission
Office of the Secretary

"USE OF TELEPHONE COMPANY STRUCTURES FOR COMMUNITY ANTENNA TELEVISION SERVICE"

DOCKET FILE COPY ORIGINAL

DECISION

MAY 27, 1981

DECISION

I. INTROOUCTION

A. Background and Company Proposal

By letter dated December 31, 1979, the New York Telephone Company (the "Company") filed with the Department of Business Regulations, Division of Public Utility Control, now the Department of Public Utility Control ("Department") proposed tariffs regarding "Use of Telephone Company Structures for Community Antenna Television Services", pursuant to Section 16-1-59A of the Regulations of Connecticut State Agencies. The tariff included a proposed pole rental fee of \$5.00 per year per pole attachment and annual duct rental rates ranging from \$.45 per duct foot to \$1.40 per duct foot. Said tariffs were filed with a proposed effective date of February 1, 1980.

B. Suspension of Tariffs

By letter dated December 31, 1979, the Department suspended the proposed tariffs and their effective date pending the outcome of the hearing.

C. Hearing Held

On May 5, 1980, the Department issued a Notice of Hearing. The duly noticed hearing was held pursuant to that order on May 16, 1980 at the offices of the Department, Hartford, Connecticut. That hearing was subsequently continued until January 19, 1981 and later continued to March 3, 1981.

D. Parties and Intervenors

At the hearing, the Company was represented by counsel. Also at the hearing, Attorney Howard Slater represented the Connecticut Cable Television Association as an intervenor and Cablevision of Connecticut was also granted intervenor status. In addition, letters were received from the Connecticut Cable Television Association and Cablevision of Connecticut in opposition to the proposed tariff filings.

II. APPLICANT'S EVIDENCE

A. General

The Company is a wholly-owned subsidiary of the American Telephone and Telegraph Company and supplies telephone service in New York and a portion of the Town of Greenwich, Connecticut. In addition to facilities physically located in Greenwich, its Connecticut customers are also served partially by facilities and personnel located in Westchester County, New York.

B. Provisions of Filing

According to the Company's application, the subject filing provides for the following:

1. Pole attachment annual rental rates.
2. Duct occupancy annual rental rates.
3. Shared cost arrangement regarding random separations of direct buried cables.

In addition the Company has filed a proposed pole attachment agreement, a duct rental agreement and direct buried agreement.

C. Pole Rental Rates

1. Cost Methodology

According to the Company the proposed \$5 annual pole rental rate was established in 1958. The Company's 1958 cost study methodology is based on determining the average investment per pole and applying an average annual carrying charge factor to obtain the annual expense per pole. The carrying charges are then divided by the number of communications cables attached to the pole. The weighted unit average annual expense per attachment is then determined. A similar calculation is made for jointly used poles. The total weighted unit average annual carrying charge is obtained by taking the sum of the solely owned and jointly owned pole expenses. An administrative expense is added to the result to obtain the proposed \$5 annual pole rental rate.

The Company indicated that the \$5 rate and the method used to develop the fee is no longer appropriate. The 1958 methodology utilizes only the Company's share of the investment in jointly owned poles.

In response to requests at the hearing, the Company submitted late filed exhibits including alternative methods of calculating a pole rental fee. The exhibits contained a calculation of a pole rental rate based on the "NARUC Subcommittee Task Force" on CATV pole attachment rates and the Company's alternative method, "share the Savings Method."

2. Annual Carrying Charges for Pole Attachment Rates

- a. The Company's Exhibit No. 3 refers to an annual carrying charge rate of 24%.
- b. Late Filed Exhibit No. 3 refers to an annual carrying charge rate of 28.4% (1979 update).
- c. Late Filed Exhibit No. 4 refers to a carrying charge of 32.3% (Prospective 1980).

- d. Late Filed Exhibit No. 4, which is based on net investment, refers to a carrying charge of 57.4%.
- e. Late Filed Exhibit No. 5 refers to a carrying charge of 26.2%.

D. Duct Rental Rates

1. General

The Company bases its duct rental rates on a 1970 survey that determines an average cost per duct foot from actual project installations. The average cost per duct foot is then multiplied by a conversion factor to project current value.

The imbedded cost per duct foot range from \$2.11 to \$3.58 for main conduits and \$3.82 to \$5.98 for subsidiary conduits. The annual rental rate per duct foot is obtained by multiplying that figure by an annual carrying charge.

E. Direct Buried Cable Arrangement

The Company's filing includes Exhibit "G" entitled "Buried Agreement", which allows joint use of a common trench and the equal sharing of the expense by users of said trench.

III. INTERVENOR POSITIONS

The main position of the intervenor was in favor of alternative methods of calculating a pole rental rate. Methods such as the "NARUC method" and the "FCC method" which develop a rate as a function of the fraction of space used by CATV to the total useable space on an average pole, the net book investment per pole, and the annual carrying charges applicable to pole attachments were noted as the preferred criteria to determine rental rates.

IV. AUTHORITY ANALYSIS

A. Background

In the subject docket several alternative methods of calculating pole rental and duct rental rates have been presented and investigated. The Company's methodology is based on a criteria utilized in 1958, which is acknowledged to be inappropriate today. During the proceeding the staff attempted to investigate the reasonableness of alternative methods of calculating rental rates. The Company has indicated that detailed derivation of the origin of expense items is very complex and would require a great deal of time, expense and effort by the Company and the Authority. The Company also disagrees with the staff's proposed methodology to develop rental rates and it would like the opportunity to defend its positions in a generic proceeding. The Company and the intervenor believe that the Southern New England Telephone Company (SNET) and Woodbury Telephone Company should also

be allowed to contribute to a proceeding which would establish methodologies which could impact on their rates.

In the interest of expediting the proceeding regarding the subject docket the Company and intervenors verbally agreed to stipulate to the following.

B. Stipulation

Pursuant to Section 4-177(d) of the Administrative Procedures Act and in the interest of expediting the resolution of this docket the Company and the intervenors agreed to stipulate to the following:

The Company agrees to reduce the proposed annual pole rental rate from \$5.00 to \$4.50, since that is the rate presently in effect for the majority of the state served by the Southern New England Telephone Company. The Company proposed annual rates for conduit rental would be implemented. Both rates would be temporary and experimental and would be in effect without prejudice and without the Company, intervenors or the Authority acknowledging what the proper methodology or rental rates are appropriate. The determination of the proper methodology, the final rates and some of the details of the conditions of rental would be deferred until the generic proceeding is resolved.

C. Pole Attachment Agreement, Conduit Agreement and Buried Agreement Language

The staff reviewed the Company's proposed agreements and has several proposed text changes. At the hearing the Company agreed to meet with staff informally to resolve said text changes.

The new agreements will be subject to this agency's approval before they become effective. The Authority believes that a public utility such as CATV should have a guaranteed occupancy beyond the proposed one year term of the pole attachment agreement. Since the rates for pole attachment and conduit occupancy are contained within the Company's tariffs and subsequent revision of same would affect existing subscribers (the CATV Company) that matter would properly be subject to the provisions of a General Statutes 16-19 hearing. Accordingly, the Company could be subjected to the full review of the Company's operations. The Company therefore would be faced with the alternative of delaying rental rate increases until a general rate proceeding or a separate 16-19 proceeding as hereinbefore noted.

The Company is hereby directed to revise the proposed agreements to allow guaranteed rental of utility appurtenances for a period of not less than ten years, at the rates and terms and conditions contained in the Company's approved tariff and rental agreements as revised. Any changes in the tariffs or the rental agreements are subject to Authority approval.

The Company's filing includes "Exhibit G, Buried Agreement" which allows joint use of a common trench and the sharing of the expense between

the users of said trench. The proposed agreement provides for equal contribution from each occupant of the trench.

The Authority agrees with the policy of sharing the cost of trenching between the occupants equally.

E. Agreement Between Connecticut Light and Power Company and the New York Telephone Company Regarding the Joint Use of Poles

In response to a request by staff, the subject agreement was provided. One of the provisions of the agreement is to allow the Telephone Company to retain all the revenue from the rental of a jointly owned pole. According to the Company, that agreement was negotiated in 1956, executed in February 1, 1972 and is still in effect today.

The Authority is concerned that the agreement appears to be unduly slanted in favor of the Telephone Company. According to the Company there could be other considerations such as potential Electric Utility revenue from Electric facilities attachment in their space which could offset the effect of the Telephone Company receiving all the revenue from attachment of communications cables. An example of an electric facility which could be attached within the electric space on a pole is street light brackets and cables. The Witness indicated that a new agreement with the power company will be negotiated in the near future. The Authority will accept the present agreement. However, the agreement can be renegotiated, between the parties or this Agency could investigate the matter at a later date, upon its own motion or upon a request by either party, the adequacy and fairness to either party.

Prior to executing new agreements or revising the provisions of the original agreements, the parties shall submit for Authority review and approval, the proposed new or revised agreements. The filing shall include an explanation of all the pertinent facts relating to the changes in the agreements.

F. Pole Attachment Make Ready Expense

The Company proposed pole attachment agreement provides that the CATV Company be responsible for all costs associated with the rearrangement of facilities on a pole to facilitate CATV attachment as well as the costs incurred when replacing a pole that had inadequate height to allow for a CATV cable attachment.

The Authority believes the make ready expense for a pole replacement should be based on the total of labor and material expenses to relocate cable facilities, removal of the old pole, installation of the new pole and the material cost for the increased height of the new pole (betterment). If the old pole has a substantial remaining value it should be returned to inventory.

This procedure can be illustrated by a typical example. An older pole of 35 foot height with an original costs assumed to be \$200 is replaced by a 40 foot pole having an assumed value of \$500. The pole line account would be increased by \$500 less the value of the pole removed and less the value of the 5 foot betterment. ($\$500 - \$200 - \$50 = \250). The depreciation reserve would reflect difference of the original cost of the old pole less the salvage value of the old pole. The Inventory Account should be changed by the difference of the values for the new and old poles. ($\$500 + \$150 = \$650$)

G. Deferred Pole Attachment Make Ready Expense

The Company proposed pole attachment agreement provides that the CATV Company be responsible for all costs associated with the rearrangement of appurtenances on a pole to facilitate CATV attachment, as well as costs incurred in replacing a pole that had inadequate height to allow for attachment of CATV cables due to the subsequent service needs of the Telephone Company.

The Authority believes that the hereinbefore noted expenses known as "deferred make ready expenses" should not be the burden of the CATV Company. In the instance that there is initially inadequate clearance on a pole to allow CATV cable attachment the CATV Company is billed for the added cost of the added height of the new pole. Since poles come in standard sizes, the Telephone Company and other joint users enjoy the benefit of the added height without added expense. Further the CATV Company is responsible for all labor and expenses to remove, relocate and/or work to replace a pole of inadequate height. We believe that the number of potential pole replacements is small in comparison to the total number of poles that would be utilized for CATV attachment. Also, the added advantage to the Telephone Company of utilizing the added pole height provided by the CATV Company regarding replaced poles, would be balanced by the added expense of deferred pole replacements due to the Telephone Company's needs. Any expenses incurred by the CATV Company in removing and relocating on a pole or the removals and installation of their cable to the new pole shall be the responsibility of the CATV Company.

H. Intervenor Positions

The Authority acknowledges that there are alternative methods of calculating pole rental rates other than those methods proposed by the Company. Methods of determining the pole rental rate such as the "NARUC formula" or the FCC formula could have some merit. However, the Authority will reserve judgement as to the proper methodology and the correct rate until the matter can be adequately investigated in a generic proceeding in which other Connecticut Telephone Companies will be invited to participate.

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V. FINDINGS OF FACT

1. The State of Connecticut has certified to the Federal Communications Commission (FCC) that this State assumes responsibility to regulate utility appurtenance rental rates, and the General Statutes provide for State regulation of such matters. This State therefore has jurisdiction regarding said rates.
2. The detailed derivation of the origin of some of the Company's expense items is complex and could require a great deal of expense and effort to complete.
3. It is in the public interest to expedite the proceeding.
4. The methodologies and rates established in the subject docket could impact on other Connecticut utility company rental rates.
5. Establishing temporary and experimental rental rates would expedite the proceeding.
6. The Company has agreed to reduce the pole rental rate from \$5 per pole per year to \$4.50 since that is the rate presently in effect for the majority of the State served by the Southern New England Telephone Company. That rate would remain in effect until the outcome of a generic proceeding.
7. The Company should revise the proposed rental agreements to reflect guaranteed rental of utility appurtenances for a period of not less than 10 years, at the rates and terms and conditions contained in the Company's approved tariff and rental agreements. Any proposed changes in the tariffs or the rental agreements are subject to Authority approval.
8. The Company's proposal to share the cost of trenching equally between the occupants of said trench is acceptable.
9. The existing joint use agreement between Connecticut Light and Power Company and the New York Telephone Company is acceptable at this time. However, any proposed changes in the agreement are subject to Authority approval.
10. The Authority believes the make ready expense for a pole replacement should be based on the total of labor and material expenses to relocate cable facilities, removal of the old pole, installation of the new pole and the material cost for the increased height of the new pole.
11. The expenses hereinbefore noted as "deferred make ready expenses" should not be the burden of the CATV Company.

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VI. CONCLUSION AND ORDER

Based on the foregoing, with due regard to all the evidence obtained, the proposed tariffs are denied.

1. The Company is hereby directed to file revised tariffs which will reflect a \$4.50 annual pole rental rate. This rate is presently in effect for the majority of the State served by the Southern New England Telephone Company.
2. The Company proposed rate for conduit rental is acceptable at this time.
3. The Company's proposal for sharing the expense of jointly used trenches is acceptable.
4. The Company is hereby directed to file revised tariffs, including rates, together with revised pertinent and related documents including but not limited to revised pole attachment agreement, conduit agreement and Buried Agreement within 30 days for Authority final review and approval in compliance with this decision.
5. The effective date of the tariffs shall be the date of this decision.
6. The rates herein approved are temporary, experimental and the determination of the proper methodology and rates will be deferred until the outcome of a generic proceeding.

We hereby direct that notice of the foregoing be given by the Executive Secretary of this Department by forwarding true and correct copies of this document to parties in interest and due return make.

Dated at Hartford, Connecticut, this 27th day of May, 1981.

Marvin S. Loewith)

Peter G. Boucher) DEPARTMENT OF PUBLIC UTILITY CONTROL

David J. Harrigan)

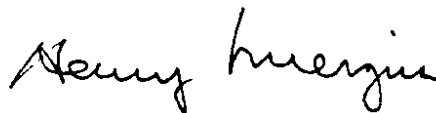
State of Connecticut)

County of Hartford)

ss. Hartford, May 27, 1981

I hereby certify that the foregoing is a true and correct copy of Decision, issued by the Department of Public Utility Control, State of Connecticut.

Attest:



Executive Secretary, Department of Public Utility Control



STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC UTILITY CONTROL

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STIPULATION

Background

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Company:
New York Telephone Company
1095 Avenue of the Americas
New York, N.Y. 10036

Intervenor:
Connecticut Cable Television Association
P.O. Box 3216
Hartford, Connecticut 06103

_____, Authorized Agent
Mr. Edward R. Wholl Esq.

_____, Authorized Agent
Mr. Howard Slater, Esq.

(ALLAN STEIN)
RM

Intervenor:
Cablevision of Connecticut
One Media Crossways Drive
Woodbury, N.Y. 11797
Represented by:
Day, Berry and Howard

_____, Authorized Agent
David A. Swerdloff
for Day, Berry & Howard
Its Attorney

Duly appeared before me, notorized and witnessed that the above person has the necessary authority and power to represent the noted entity, that it is a free act and that the signature is that of the individual noted.

Notary _____ Seal

Witness _____ L.S.

(ALREADY SIGNED)
RM